Supreme Court, U.S.
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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1999

ROBERT HEDRICK ET AL - PETITIONERS

v.

PATSY L. HEDRICK ET AL - RESPONDENTS

On Petition For Writ of Certiorari
To The United States Court of Appeals For The Fifth Circuit

## PETITION FOR WRIT OF CERTIORARI

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34 pp

## QUESTIONS PRESENTED

1. Did the appeals court violate Petitioners Fourteenth Amendment procedural due process rights by refusing to strike all arguments by respondents on "personal-jurisdiction?

2. Did the appeals court violate Petitioners Fourteenth Amendment rights to a fair and equitable trial by refusing to strike all arguments by respondents on "personal-jurisdiction" when the district court made no ruling on the issue of "personal-jurisdiction"?

3. Did the appeals court fail to follow it's own rulings and administrative procedures by failing to strike all arguments by respondents on "personal-jurisdiction"?

4. Did the appeals court violate Petitioners Fourteenth Amendment right to a fair trial by setting itself up as a trial court instead of a court of review?

5. In continuation of 4 above: Did the appeals court violate Petitioners Fourteenth Amendment right to a fair trial when it failed to strike all arguments by respondents on "personal-jurisdiction" when no "evidentiary hearing" was held by the district court and "in fact" could not be held prior to determination of subject-matter jurisdiction?

6. Did the appeals court violate Petitioners right to due process by allowing respondents who did not answer the original petition in the lower court to file briefs in the appeals court?

## PARTIES TO PROCEEDING

All parties **do not** appear in the caption of the case on the cover sheet. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

**Petitioners**
ROBERT HEDRICK
SHANNON HEDRICK, a minor child
SEAN HEDRICK, a minor child

**Respondents**
PATSY L. HEDRICK
THOMAS V. GRIMES
DIANE RITCHEY ANDREWS
LAURA SUSSEY HOUSE
STATE OF CALIFORNIA
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
THOMAS ASHWORTH, III, JUDGE
ROB IRWIN
ANGELA DAMANTE CUNNINGHAM
SANDIE VIGILIA
JERRY SANDERS
NANCY GOODRICH
ROBERT KRUMWEIDE
KEVIN MOYNA
MIKE BONGIORNO
KIM BONGIORNO
M PATRICIA CHAVEZ-FALLON
JAMIE VOSS
CHARTER BEHAVIORAL HEALTH SYSTEM OF SAN DIEGO
BEATRICE HELLER, Ph D

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

## OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

## JURISDICTION

The date on which the United States Court of Appeals decided my case was February 3, 1999.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provision involved in this case is the Fourteenth Amendment, Section 1 and in specific the guarantee of due process of law, the right to a fair and equitable trial and the right to be heard in a court of law as determined by the common law and case law. The Fourteenth Amendment, Section 1 appears in Appendix D to the petition. Additional provisions involved in this case is the Thirteenth Amendment prohibiting slavery in the United States which appears in Appendix E to the petition. The Bill of Rights which appears in Appendix F to the petition.

## STATEMENT OF THE CASE

This is a case that accuses the respondents of a conspiracy to **"re-establish a State Sponsored and Court Supported institution of slavery".** A new form of slavery in which the "children of divorce" are being forced into slavery at the hands of the custodial parent anytime fraud, perjury, false allegations of child abuse or parental alienation is used by the custodial parent or their attorney to deny the non-custodial parents their constitutionally guaranteed rights to associate with their children. That these "children of divorce" suffer the same traumatic, mental and even physical experiences as did the children of slaves.

That the Thirteenth Amendment and those laws and acts (The Mann Act) passed in the decades following the Emancipation Proclamation applied to all persons (not just black Africans). Slavery has existed since Roman times and encompassed persons of all ages and colors. Slavery is not the exclusive condition of a single color of person. In the history of the world it has surfaced under many faces and in many new forms. The challenge for the "law givers" is to recognize those new faces and new forms and to be swift in dealing a death blow to the establishment of them.

That *in re;* **Hedrick v. Hedrick** [1](hereinafter referred to as the California Cases) the respondents became "co-conspirators" and participated as "state actors" to protect themselves from criminal prosecution by "under color of law" forcibly removing the Hedrick children out of the "legal custody" of the State of California, crossed state lines into Texas, to prevent the discovery of the sexual, mental and physical abuse of Shannon Hedrick and Sean Hedrick at the hands of Patsy Hedrick. In the process of the domestic case numerous violations of the Constitution of the United States, the United States Criminal Code (Title 18) and the California Penal Code are alleged to have been committed by defendants.

These violations and abuses have continued in the State of Texas and now into the State of Oklahoma where Shannon Hedrick was arrested for stealing a car in her attempts to escape the abuses of her mother. *In the matter of:* **Shannon Michelle Hedrick**, JF-99-

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[1]**Hedrick v Hedrick,** D-431495 TXA (1996) Cal. Supr. Ct. (San Diego)

003, Dist. Ct., Pushmataha Cty, Okla. (Filed Jan 26 1999) Shannon was made a ward of the court. Petitioners allege that if Shannon had remained in the care of the State of California these crimes would not have occurred in Texas and Oklahoma. That the respondents are responsible under the theory of the law of torts for the crimes committed (under duress) by Shannon Hedrick in her attempts to flee the abuses of her mother.

The California cases are not at issue, but are **"clear and current"** evidence that children of divorce are routinely placed into a form of slavery, in violation of Federal laws. The weapons and tools of the courts, attorneys, judges and clients to place these children into slavery is **"parental alienation", fraud, perjury, false allegations of child abuse and false allegations of molestation".** The use of these illegal acts are **common everyday practices** that lines the pockets of attorneys and ***so called*** legal support professionals resulting in the destruction of the American Family.

Petitioners allege that Parental Alienation (brainwashing of a child to hate one of the parents of divorce) is **"a new form of slavery"** and violates the children's Thirteenth Amendment rights as well as the fathers rights, under the constitution, to raise his children as an equal in divorce.

The Second Cause of Action is the loss of petitioners Fifth and Fourteenth Amendment rights to liberty interest in life, liberty and pursuit of happiness by forcing petitioners children to be alienated from him and placed into mental and physical slavery.

Petitioners further accuse defendants of numerous violations of Title 18, United States Code including fraud, perjury, aiding and abetting, witness tampering and obstruction of justice. Violations of U.S.C. Title 18 clearly fall within Federal Jurisdiction as does the **"forced kidnaping"** under **"color of law"** of Shannon Hedrick and Sean Hedrick against the professional advise of medical specialists who testified in the lower court. Patsy Hedrick, Thomas Grimes, and Diane Ritchey-Andrews were arrested under Citizen's Arrest"[2], in court, for numerous violations of the California Penal Code.

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[2]Cal. Pen. Code § 837. **Citizen's Arrest;** *Cal. Pen. Code* § 13701(a) and (c)3...**Specific Standards**...; *See also* San Diego Police Dept. P. 4.4 (12/20/87)

Shannon Hedrick was "legally" placed into the "sole physical" custody of the State of California and institutionalized in Charter Behavioral Hospital of San Diego. Under **"color of law"** Judge Thomas Ashworth assisted Patsy Hedrick to flee prosecution in California (crossing state lines into Texas) and forcibly removed Shannon Hedrick from the institutional facility in which she was being treated without notice to the State of California who held legal custody. Petitioners allege that this was done because the mental, physical and sexual abuse of Shannon Hedrick and Sean Hedrick were being discovered by the medical staff at Charter Behavioral Hospital and Judge Thomas Ashworth could have "lost his qualified immunity" and be held accountable for the torture of Shannon and the brainwashing of Sean.

It is under these conditions and background that petitioners filed suit in the United States District Court, Southern District of Texas, Houston Division alleging all of the above. The respondents filed arguments based "solely" on personal-jurisdiction. Some respondents failed to respond in a timely manner and some defendants attempted to avoid service. The district court ruled that the Congress of the United States has not granted the federal courts the subject-matter jurisdiction over divorce cases. This was in error. This case is not a divorce case. It is about **"the establishment of a new form of slavery that is destroying our American Family and a family court system "out of control" and attorneys and clients violating Constitutional rights, Federal laws and State laws so that they can win at any cost.**

The petitioners do not disagree that the district court has a mandate to determine on the issue of subject-matter jurisdiction; they simple disagree with the district courts ruling that it is a divorce case only. The California Cases are evidence of the worst kind of example of **"Court Sponsored Slavery"**. Shannon Hedrick is an example of the worst kinds of abuse. She was sexually abused by her mother, locked into a garage with no water, no place to sleep and no bathroom and mentally tortured. She ran away from her mother over 8 times in California and an equal number of times in Texas and fled into Oklahoma where she was arrested for stealing a car. She was raped by two men in California which resulted in her placement by her father into the custody of the State of California in accordance with provisions of the California Welfare Code so that the proper

medical treatment could be provided. All of these things are a part of the record in the California cases. The California Cases are the **"hard evidence" or the "smoking gun"** that proves that the family court system is out of control and cannot deal with the "children of divorce". This is a case about Thirteenth Amendment Rights and not about the terms or conditions of a divorce.

Petitioners disagreement with the ruling of the district court resulted in the filing of an appeal to the United States Court of Appeals for the Fifth Circuit. Again, respondents made arguments limited only to personal-jurisdictional issues. Petitioners moved to strike all arguments to personal-jurisdiction on the basis that the district court limited its decision to subject-matter jurisdiction and made no ruling on the issue of personal jurisdiction. The United States Court of Appeals for the Fifth Circuit denied the motion to strike.

No final judgement in the court of appeals has been made. Therefore, petitioners are requesting the United States Supreme Court rule on procedural due process in order to insure (at the outset) a fair and equitable hearing based only upon the rulings of the district court on **"subject matter jurisdiction".** Now petitioners bring this denied motion before the United States Supreme Court. It is of paramount importance to all non-custodial parents in the United States and in the families of the world that the issue of the abuse of the "children of divorce" be given its day in court. The future survival of the family structure in America may well depend on how the Federal Courts rule on the "**lack of enforcement by our family courts"** of the use of fraud, perjury, false allegations and parental alienation that allows attorneys to win for their clients at the cost of a minority of our population: **"The Children of Divorce".**

Petitioners ask and plead that the United State Supreme Court rule now on the "technical aspects" of procedural due process prior to the **"final hearings and decisions"** of the United States Court of Appeals for the Fifth Circuit. The court of appeals must provide a fair hearing in this matter. As yet, no evidentiary hearing has been held by the United States District Court for the Southern District of Texas to hear petitioners evidence that the Federal Court does have jurisdiction over the respondents. This is a violation of procedural due process as well as fairness under the common law. The decision

on the procedure by which the court determines when and where the court has personal-jurisdiction and how to determine it affects all citizens of the United States.

## REASONS FOR GRANTING THE PETITION

On February 3, 1999 the United States Court of Appeals for the Fifth Circuit denied plaintiffs Motion to Strike all references to personal-jurisdiction and objections to allowing respondents who were in default from filing briefs in the appeals court (SEE APPENDIX A).

The action of the court of appeals denies plaintiffs Fourteenth Amendment rights to procedural due process of law; denies plaintiffs Fourteenth Amendment rights to equal protection of the law,[4] and denies plaintiffs Fourteenth Amendment rights to a fair trial[5]. Not only was the decision of the United States Court of Appeals for the Fifth Circuit a violation of procedural due process; but it was **"specifically contradictive"** to the 5th Circuits own rulings on personal-jurisdiction verses subject-matter jurisdiction.[6]

> "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept...What is fair in one set of circumstances may be an act of tyranny in others."[7]

Bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial.

*In re* **Marathon Oil Company v. A.G. Ruhrgas** (1998) the United States Fifth Circuit Court of Appeals ruled:

**"Today we decide whether, on removal from a state court, a district court has discretion to resolve a challenge to personal**

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[4]**The Civil Rights Cases,** 109 U.S. 2, 11 (1883)

[5]**Bill of Rights**

[6]**Marathon Oil Company v. A.G. Ruhrgas,** U.S. 5th Circuit, No. 98-20361, decided June 22, 1998.

[7]**Snyder v. Massachusetts,** 291 U.S. 97, 116,117 (1934); *See also* **Buchalter v. New York,** 319 U.S. 427, 429 (1943)

**jurisdiction before ruling on a legally more difficult question concerning its alleged lack of subject-matter jurisdiction. We conclude that, at least in removed cases, district courts should decide issues of subject-matter jurisdiction first and, only if subject-matter jurisdiction exist, reach issues of personal jurisdiction. Accordingly, we vacate the judgement and remand with instruction to rule on the motion to remand to state court for lack of subject-matter jurisdiction."**[8]

"[t]he appropriate course [for a federal court] is to examine for subject matter jurisdiction constantly and , if it is found lacking, to remand to state court if appropriate, or otherwise dismiss."[9]

*In re* Marathon Oil Company v. A.G. Ruhrgas (1998) the United States Fifth Circuit Court of Appeals, in its determinations stated:

> **"After the Supreme Court denied certiorari, we granted en banc review. We now take this opportunity, as an en banc court, to reconcile the conflicting circuit precedent cited by the panel and to explain a district court's obligation concerning which challenge it should decide first when confronted with a removed case in which the existence of subject-matter jurisdiction is questionable and personal jurisdiction is contested. We conclude that the court should proceed to consider the issue of subject-matter jurisdiction (even if that is the more legally difficult issue) before proceeding to address whether it (or, for the matter, the state court) would have personal jurisdiction over the protesting defendants."**[10]

It is clear that the 5th Circuit court fully intended to set up a set of procedural due process rules by which the United States District

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[8] Marathon Oil Company v. A.G. Ruhrgas, U.S. 5th Circuit, No. 98-20361, decided June 22, 1998.

[9] Ziegler v. Champion Mortgage Co., 913 F.2d 228 (5th Cir. 1990)

[10] Marathon Oil Company v. A.G. Ruhrgas, U.S. 5th Circuit, No. 98-20361, decided June 22, 1998.

Court was to abide by. **Subject-matter jurisdiction must be decided upon before any ruling on personal jurisdiction. Period, end of subject!**

The United States District Court for the Southern District of Texas **"properly issued"** a ruling on subject-matter jurisdiction. *In re* **Hedrick et al v. Hedrick et al**[11], in compliance with the ruling *in re* **Marathon Oil Company v. A.G. Ruhrgas**, (1998).

Additionally, the United States District Court for the Southern District of Texas (hereinafter referred to as "the District Court") **"properly DID NOT RULE** on the issue of personal jurisdiction.

In it's dismissal on the basis of **"subject-matter jurisdiction"** the District Court stated:

> **"Plaintiff's claims in the instant lawsuit must therefore be DISMISSED because Congress has not conferred jurisdiction on this Court to review the California proceedings."** See **Appendix B** attached to petition.

The district court ruled that the Congress of the United States has not granted the courts **"subject-matter jurisdiction"** to review the California cases. It is on the basis of **"disagreement"** with this ruling that the petitioners have brought their appeal to the United States Court of Appeals for the Fifth Circuit. Plaintiffs have stated that the case in the district court **is not** a case to overturn or decide a divorce action that started in California; but is **clearly** a case to **determine if the "children of divorce, including the plaintiffs"** (a minority of all children) are, **in fact,** being placed **into a new form of slavery in violation of Thirteenth Amendment protections** whenever they are denied their Constitutionally guaranteed right to associate with both parents; whenever **fraud, perjury, parental alienation or false allegations of child abuse or molestation** are used by one side or the other to win and to falsely and unfairly prevent association.

Plaintiffs allege that the case before the district court is not a divorce case but, is a **slavery case and a civil rights violations case.**

Clearly the Plaintiffs have a right to a fair and equitable trial

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[11] **Hedrick et al v. Hedrick et al,** S.D. Tx., CA H-98-1520.

on this issue prior to any rulings on personally jurisdiction.

Clearly the district court is **"mandated"** to decide subject-matter jurisdiction prior to personal jurisdiction. Procedural due process can only be complied with by convening an **evidentiary hearing** in the District Court. *In re* **Aristech Chemical International v. Acrylic Fabricators Limited,**[12] the United States Appeals Court for the Sixth Circuit ruled:

> **"This appeal requires us to decide whether the exercise of personal jurisdiction over a Canadian defendant is reasonable. The district court concluded that it was not, and therefore granted the defendant's Rule 12 (b)(2) motion to dismiss. But we find that the district court did not properly balance the burden on the Canadian defendant against the interests of the plaintiff and the forum state. Because we believe that the exercise of personal jurisdiction is reasonable, we reverse."**

The 6th Circuit goes on to state:

> **"Before focusing on the facts relevant to this appeal, we briefly review the strictures that govern a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. In the court below, the district judge relied on the parties' affidavits and DID NOT HOLD ANY EVIDENTIARY HEARING [*Caps added].* In these circumstances, we view the facts in the light most favorable to the plaintiff, *see Theunissen v. Matthews,* 935 f.2D 1454, 1459 (6TH CIR. 1991), and did not consider facts proffered by the defendant that conflict with those offered by the plaintiff. *See id.* We recite the facts given rise to this appeal in accordance with these principles."**

Case law regarding personal jurisdictional issues require that an **EVIDENTIARY HEARING** be convened at the District Court level to allow review of all of the facts from both sides.

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[12] Aristech Chemical International Limited v. Acrylic Fabricators Limited, 1998 FED App. 0082((6th)

*In re* **Marathon Oil Company v. A.G. Ruhrgas**[13], at least in removed cases, the district court has a **mandate** to determine whether it has subject matter jurisdiction before considering challenges to personal jurisdiction.

Petitioners now ask:

**Isn't it also a mandate that the United States Court of Appeals also must determine subject-matter jurisdiction before it can determine personal jurisdiction?**

The argument can be made that it is not fair for the court of appeals to be able to make decisions on matters that the district court cannot. This is a total reverse of the order of procedures within the court system and is unequitable!

If it is **held true** that the district court cannot rule on personal jurisdiction before ruling on subject-matter jurisdiction; **then it must also be held true** that **no evidentiary hearing** may be held until after subject-matter jurisdiction has been heard.

Since **no evidentiary hearing was held** *in re* **Hedrick et al., v. Hedrick et al,** in the district court; the United States Court of Appeals **cannot rule on matters of personal jurisdiction** and therefore, was in error in not striking all references to personal jurisdiction in all briefs filed by the respondents. To do otherwise, would be unfair and unequitable in light of recent rulings on the by the 5th Circuit and other circuit courts.

It would be totally unfair to the plaintiffs herein for the Court of Appeals for the Fifth Circuit to now consider personal jurisdiction without **procedural due process** in the district court. This violates plaintiffs Fourteenth Amendment rights.

Since the District Court did not convene an evidentiary hearing and did not make any ruling on the issue of personal jurisdiction the appeals court **cannot review the issue.** For the United States Court of Appeals to rule on the same, without the issue being ruled upon at an evidentiary hearing in the district court would further deny plaintiffs due process rights.

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[13]**Marathon Oil Company v. A.G. Ruhrgas,** 145 F.3d at 217.

The distinct difference between subject-matter jurisdiction issues and personal jurisdiction issues is that the parties cannot waive subject-matter jurisdiction, but the parties can waive personal jurisdiction issues. If the United States Court of Appeals even considers the issue of personal jurisdiction prior to an evidentiary hearing at the district court level the plaintiffs have been denied the right to produce evidence supportive of their claim that jurisdiction does rest with the district court as well as any party who either has voluntarily waived personal jurisdiction or have involuntarily waived personal jurisdiction by their actions in this case or in related cases.

*In re* **Hedrick et al v. Hedrick et al.**, petitioners **do not** challenge the district courts authority to make a ruling on subject-matter jurisdiction; only on the **validity of that ruling. In fact,** petitioners were prepared for a challenge to subject-matter jurisdiction for it will bring the issue of **slavery of the "children of divorce"** before the **United States Supreme Court** or before the **Judiciary Committee of the Congress of the United States** should the court rule that Congress has not granted the courts this authority. In either case the matter will be heard.

The importance of both the lower federal courts' constitutional and statutory subject-matter jurisdiction should not be underestimated. "Because of their unusual nature, and because *it would not simply be wrong but indeed would be an unconstitutional invasion of the powers reserved to the states if federal courts were to entertain cases not within their jurisdiction,* the rule is well settled that the party seeking to invoke the jurisdiction of a federal court must demonstrate that the case is within the competence of that court." **Charles A. Wright et al.,** Federal Practices and Procedure § 3522, at 61-62 (2d ed. 1084)(emphasis added).[14]

The Supreme Court has ruled that the federal courts must consider federal jurisdiction at the outset of the case. The Court rejected what the Ninth Circuit had labeled the "doctrine of hypothetical jurisdiction""...the process of "assuming" [Article III]

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[14]*See* **Tafflin v. Levitt,** 493 U.S. 455, 458 (1990); *see also* **Robb v. Connoly,** 111 U.S. 624, 637 (1884) (Harlon, J.) ("Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States...")

jurisdiction for the purposes of deciding the merits" of a case.[15]

*In re* **Hedrick et al., v. Hedrick et al.,** as *in re* **Marathon Oil Company v. A.G. Ruhrgas** petitioners do not dispute that a federal district court must determine its jurisdiction before proceeding to the merits of the case. Petitioners *in re* **Hedrick et al., v. Hedrick et al.,** do not agree that **"jurisdiction is jurisdiction is jurisdiction".** It is not and the courts have ruled so on numerous occasions.

Although the personal jurisdiction requirement is a "fundamental principl[e] of jurisprudence," **Wilson v. Selgman,** 144 U.S. 41, 46 (1892), without which a court cannot adjudicate, the requirement of personal jurisdiction, unlike that of subject-matter jurisdiction, "may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue." **Insurance Corp. Of Ireland,** 456 U.S. at 704; *see also* Fed. R. Civ. P. 12 (h). The defendants ability to waive the defense arises from the reality that

> **"[t]he requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause...It represents a restriction on the judicial power not as a matter of sovereignty, but as a matter of individual liberty."**[16]

To deny plaintiffs the right in the district court to an **evidentiary hearing** on the issues of personal jurisdiction would deny also the right of the State of California and several other **"one-time defendants"** in the original lawsuit to exercise their **"personal liberty"** rights to waive **"personal jurisdiction"** in favor of a hearing within the State of Texas.

It would also deny the rights of individuals within the State of Oklahoma from presenting evidence in support of jurisdiction remaining within the states of Texas. In fact, Judge Doyle E. Blythe, Judge of the District Court for Pushmataha County,

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[15] **Steel Co. v. Citizens for a Better Env't,** 118 S. Ct. 1003, 1012 (1998) (majority opinion) (quoting **United States v. Troescher,** 99 F.3d 933, 934 n.1 (9th Cir. 1996)

[16] **Insurance Corp. Of Ireland,** 456 U.S. at 702; *see also* **Omin Capitol Int'l v. Rudolf Wolff & Co., Ltd.,** 484 U.S. 97, 104(1987) (quoting the same)

Oklahoma, representing the State of Oklahoma, filed an application on March 1, 1999 (SEE APPENDIX C) to move jurisdiction of the Oklahoma cases to the jurisdiction of the State of Texas. Petitioners would be denied the right to submit to the United States District Court at the **evidentiary hearing** evidence produced in the Oklahoma Cases that is supportive of the allegations that the crimes committed in California continued into Texas and then into Oklahoma making Texas the best choice of the three (3) states now involved for the location of litigation and **in fact** protects the rights of the State of Texas as an interested party and potential plaintiff in the case due to the crimes committed (under duress) by Shannon Hedrick in Paris, Texas while trying to flee the torture of Patsy Hedrick.

The Supreme Court has carefully defined the distinctions between subject-matter and personal jurisdiction:

> **"Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, principles of estoppel do not apply, and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. '[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record."[17]**

*In re* Insurance Corp. Of Ireland, 456 U.S. at 702

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[17] Mansfield, C. & L.M. R. Co. V. Swan, 111 U.S. 379, 382 (1884)

(emphasis added) (citations omitted). The Court therefore has indicated that "jurisdiction" is not always "jurisdiction. The distinction is that subject-matter jurisdictional requirements prevent our overreaching into the power that the Constitution and Congress have left to the state courts, while personal jurisdiction requirements prevent both state and federal courts from upsetting the defendant's settled expectations as to where it can reasonably anticipate being sued. *See id.* At 702-04.[18]

A federal courts dismissal for lack of personal jurisdiction affects the state court from which a case was removed in a way that a remand for lace of subject-matter jurisdiction does not. As *Ruhrgas* concedes, dismissal for a lack of personal jurisdiction adjudicates the matter between the parties and is binding on the state court.[19]

## CONCLUSION

In conclusion, a federal court can remand a removed case for lack of subject-matter jurisdiction without offending the right and residual power of a state court to adjudicate, or depose of, that case, but the federal court cannot do the same by assuming that it has subject-matter jurisdiction in order to reach an easier personal jurisdiction issue. Nor can it make any ruling on personal jurisdiction until subject-matter jurisdiction has been determined.

In the immediate case of **Hedrick et al. v. Hedrick et al.** the **district court properly** raised the issue of subject-matter jurisdiction and **petitioners properly** appealed based upon their disagreement. The **appeals court improperly** dismissed plaintiffs Motion to Strike all references to personal jurisdiction since it has **no mandate** to rule on the issue prior to a ruling (including any appeal to the United States Supreme Court) on subject-matter jurisdiction. **No mandatory evidentiary hearing** has been or can be convened until the issue of subject-matter jurisdiction had be settled.

To attempt any review of personal-jurisdiction without a determination of subject-matter jurisdiction would deny petitioners

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[18]*See also* **Calderon v. Ashmus,** 118 S. Ct 1694, 1697 n.2 (1998).

[19]**Carpenter v. Wichita Falls Indep. Sch. Dist.,** 44 F.3d 362, 365 (5th Cir. 1995) (citing **Wilson v. Republic Iron $ Steel Co.,** 257 U.S. 92 (1921)).

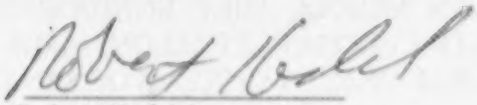
Fourteenth Amendment rights to due process, equity and fairness under the Constitution of the United States and the Bill of Rights. It would unduly prejudice any future state court case. It would deny plaintiffs rights to an evidentiary hearing to present evidence in support of jurisdiction remaining with the federal court.

Case law has continuously held that the appeals court as a court of review can only review issues that were decided by the lower court. To do so would become an abuse of discretion. To have any hearing in the court of appeals on the issue of personal jurisdiction prior would be unfair to litigants and replaces democracy with anarchy.

Plaintiffs request that the court issue a judgement on the "technical and complex" issue being presented herein, before any final hearing in the United States Court of Appeals for the Fifth Circuit to insure that the court of appeals grants plaintiffs a fair trial on subject-matter jurisdiction. The outcome of that trial is of interest to the citizen's of the United States and will have an affect on future courts of law. This is a "public issue" that demands your attention.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Robert Hedrick

Date: April 26, 1999

**APPENDIX A**

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 98-20868

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ROBERT HEDRICK; SHANNON HEDRICK, a minor child; SEAN C HEDRICK

Plaintiffs - Appellants

v.

PATSY L HEDRICK; THOMAS V GRIMES, DIANE RITCHEY ANDREWS; LAURA SUSSEY HOURS; STATE OF CALIFORNIA SUPERIOR COURT OF CALIFORNIA; COUNTY OF SAND DIEGO; THOMAS ASHWORTH, III, Judge; ROB IRWIN; ANGELA DAMANTE CUNNINGHAM; SANDIE VIGILIA; JERRY SANDERS; NANCY GOODRICH; ROBERT KRUMWEIDE; KEVEN MOYNA; MIKE BONGIORNO; KIM BONGIORNO; M PATRICIA CHAVEZ FALLON; JAMIE VOSS; CHARTER BEHAVIORAL HEALTH SYSTEMS OF SAN DIEGO; BEATRIZ HELLER, PhD

Defendants - Appellees

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Appeal from the United States District Court for the Southern District of Texas, Houston

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ORDER:

IT IS ORDERED that Appellant's motion to strike portions of Appellees' brief is DENIED.

IT IS FURTHER ORDERED that Appellant's additional

request to strike all pleadings in record on appeal, on behalf of Charter Behavioral Hospital of San Diego, Beatrice Heller, Ph.D., Sandie Vigilia, M. Patricia Chavez-Fallon, and Jamie Voss is DENIED.

/s/ Rhesa H. Barksdale
RHESA H. BARKSDALE
UNITED STATES CIRCUIT JUDGE

**APPENDIX B**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Robert L. Hedrick, et. al | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. |
| | § | H-98-1520 |
| Patsy L. Hedrick, et. al. | § | |
| | § | |
| Defendants. | § | |

MEMORANDUM AND ORDER

Plaintiff Robert L. Hedrick filed this civil rights action alleging numerous constitutional violations, including violations of his First, Fourth, Sixth, Ninth, Thirteenth, and Fourteenth Amendment rights. Plaintiff seeks injunctive and declaratory relief, as well as compensatory, punitive, and exemplary damages for actions taken by his former wife, her attorney, the State of California, the San Diego County Superior Court, the Honorable Thomas Ashworth, III, various San Diego County Superior Court staff, and other California officials, entities and individual citizens. Although Plaintiff's meandering 193-page complaint is not a model of either legal or factual clarity, it appears that this lawsuit was spawned by Plaintiff's dissatisfaction with the separation, marital, and custodial orders entered in the California Superior Court in two cases, Hedrick v. Hedrick, No. D-431495; and Hedrick v. Hedrick, No. DV-001621 (hereinafter the "California proceedings"). These cases involved, respectively, a marriage dissolution proceeding and domestic violence matter between Plaintiff and his former wife. Plaintiff's apparent frustration with the California proceedings focuses mainly on the granting of custody of Plaintiff's minor children, Shannon and Sean Hedrick, to the children's mother, Patsy Hedrick.

Currently pending are numerous motions filed by Defendants objecting to venue and to dismiss for lack of personal jurisdiction and a motion by Plaintiff for default judgment as to certain of the Defendants. There appears, however, to be another jurisdictional issue that deserves primary consideration. That is whether this Court

may exercise subject matter jurisdiction over the issues raised in Plaintiff's complaint under the doctrine set forth in two United States Supreme Court decisions -- District of Columbia Court of Appeals v. Feldman, 103 S. Ct. 1303 (1983) and Rooker v. Fidelity Trust Co., 44 S. Ct. 149 (1923) -- and their progeny. Although Defendants have not raised this point in their filings, the Court has an independent responsibility to conduct such an inquiry *sua sponte.* See Marathon Oil Co. V. Ruhrgas, 145 F.3d 211, 217 (5th Cir. 1998) (citing Mt. Healthy City Sch. Dist. Bd. Of Educ. v. Doyle, 97 S. Ct. 568, 571 (1977)); Odeco Oil & Gas Co. Drilling Division v. Bonnette, 4 F.3d 401, 403 n.2 (5th Cir. 1993), cert. denied, 144 S. Ct. 1370 (1994). Thus, at this juncture, the interests of judicial economy are better served by first addressing the question of subject matter jurisdiction. *Cf.* Ruhrgas, 145 F.3d at 217 (at least in removed cases, a court must determine whether it has subject matter jurisdiction before considering challenges to personal jurisdiction).

It is an axiom that federal district courts exercise only original jurisdiction. District courts lack jurisdiction to review state court decisions rendered in judicial proceedings. Feldman, 103 S. Ct. At 1311-12; Rooker, 44 S. Ct. At 150; Liedtke v. State Bar of Texas, 18 F.3d 315, 317 (5th Cir.), cert. denied, 115 S. Ct. 271 (1994). This is generally known as the Rooker-Feldman doctrine. Succinctly stated, constitutional or statutory questions arising in state court proceedings are to be resolved by the state courts. Liedtke, 18 F.3d 317. "If a state trial court errs, the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court." Id. Appeal at the federal level is limited to an application for a writ of certiorari to the Supreme Court of the United States. *See* 28 U.S.C. § 1257(a); Rooker, 44 S. Ct. at 150.

A review of Plaintiff's complaint reveals that Plaintiff's claims of violations of his constitutional and civil rights are "inextricably intertwined" with his dissolution and domestic violence lawsuits between him and Patsy Hedrick in state court in California. Feldman, 103 S. Ct. At 1315 n.16. Indeed, Plaintiff seeks nothing less than the wholesale invalidation of the separation and custodial orders issued in the California proceedings, and in particular a redetermination of the custodial issue. His entire complaint is a recitation of the California proceedings, supplemented by allegations of deficiencies and irregularities therein, and interspersed with expressions of extreme dissatisfaction with the family court system

in California.

These are precisely the types of claims that the Rooker-Feldman doctrine forbids a federal district court from considering. *See* Hale v. Harney, 786 F.2d 688, 690-691 (5th Cir. 1986) (finding no jurisdiction over plaintiff's civil rights claims against his former wife, her lawyer, and the state court judge who presided over plaintiff's divorce action as plaintiff was complaining about the terms of the divorce decree issued in state court). Plaintiff's remedy in this case is to appeal his objections to the appropriate California appellate court and ultimately to seek review in the United States Supreme Court. Plaintiff's claims in the instant lawsuit must therefore be DISMISSED because Congress has not conferred jurisdiction on this Court to review the California proceedings.

The Clerk will enter this Order and send copies to all counsel of record.

SIGNED at Houston, Texas this 10th day of September, 1998.

/s/ Ewing Werlein, Jr.
EWING WERLIN, JR.
UNITED STATES DISTRICT JUDGE

**APPENDIX C**

IN THE DISTRICT COURT IN AND FOR PUSHMATAHA COUNTY, STATE OF OKLAHOMA

JUVENILE DIVISION

IN THE MATTER OF:

**SHANNON MICHELLE HEDRICK** **JF 99-003**

DELINQUENT CHILD

**APPLICATION REQUESTING COURT TO RECEIVE CASE**

COMES NOW, the District Court of Pushmataha County, State of Oklahoma, and states that in the above matter the minor child was adjudicated as DELINQUENT and made a ward of the Court on the 23rd day of February, 1999.

That said minor child is now in the custody of the natural mother and residing in Lamar County, Texas, with supervision by the Office of Juvenile Affairs and that it is in the best interest of the said minor child that jurisdiction over her be transferred to the Juvenile Division of the District Court of Lamar County, State of Texas.

IT IS THEREFORE REQUESTED BY THE PUSHMATAHA COUNTY DISTRICT COURT that jurisdiction in the above entitled cause be accepted by and transferred to the Juvenile Division of the District Court of Lamar County, State of Texas.

/s/ Doyle E. Blythe
JUDGE OF THE DISTRICT COURT

## APPENDIX D

Amendment XIV-Section 1

**"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the law."**

## APPENDIX E

Amendment XIII

**"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."**

## APPENDIX F

### Bill of Rights

Amendment V

**"No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."**

Amendment VI

**"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."**

## APPENDIX G

### Emancipation Proclamation

By the President of the United States of America:

A Proclamation:

Whereas on the 22nd day of September, A.D. 1862, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the 1st day of January, A.D. 1863, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom."

"That the executive will on the 1st day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-In-Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, as a fit and necessary war measure for suppressing said rebellion, do, on this 1st day of January, A.D. 1863, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the first day above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States the

following, to wit:

Arkansas, Texas, Louisiana (except parishes of St. Bernard, Palquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assuption, Terrebone, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Morthhamption, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defense; and I recommend to them that, in all case when allowed, they labor faithfully for reasonable wages.

And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

ABRAHAM LINCOLN, President of the United States

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT HEDRICKet al., - PETITIONERS

VS.

PATSY HEDRICK et al., - RESPONDENTS

**PROOF OF SERVICE**

I, Robert Hedrick, do swear or declare that on this date, April 26, 1999, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Patsy L. Hedrick
995 34th Southeast
Paris TX 75460

Laura Sussey-House
9884 Mercy Rd. #8
San Diego CA 92129

Victoria L. Thompson
303 Jackson Hill
Houston TX 77007
Attn.: Beatrice Heller

Casey Gwinn, Anita M. Noone
Eugene P. Gordon- City Attn.
1200 Third Ave., Ste. 1100
San Diego CA 92101
Attn: Jerry Sanders
Nancy Goodrich

Kim & Mike Bongiorno
9890 Mercy Road #1
San Diego CA 92129

M.C. Rick Norton
3156 Vista Way, Ste. 200
Oceanside CA 92056
Attn: Thomas V. Grimes

Ralph W. Peters
1600 Pacific Hwy., Ste 355
San Diego CA 92101-2469
Attn: Superior Court of CA
Thomas Ashworth, III
Robert Krumweide
Kevin Monya
M. Patricia Chavez-
Fallon; Jamie Voss

Sandie Vigilia
9860 Mercy Rd. #1
San Diego CA 92129

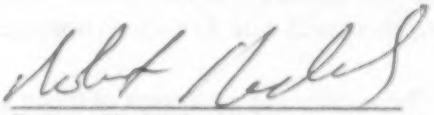
Jim E. Cowles, Gregory J.
Lensing, Kathern Elrich
901 Main Street, Ste. 4000
Dallas TX 75202
Attn: Diane Ritchey-Andrews

John B. Wallace, James
Corbett, H. Kent Twining
909 Fannin, Ste. 2700
Houston TX 77010
Attn: Angela D. Cunningham

John S. Serpe, Steven B.
Edmundson
909 Fannin, Ste. 2500
Houston TX 77010
Attn: Charter Behavioral Hosp.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 1999.



Robert Hedrick